

The background of the slide is a solid orange color, decorated with various silhouettes of maple leaves in a slightly darker shade of orange. The leaves are scattered across the frame, with some appearing larger and more detailed than others, creating a subtle pattern.

# Critical Legal Method

22<sup>nd</sup> March, Workshop on Legal Methods, UL

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# Introduction

- Charlie 'The Hare' Maguire
- Small farm in Cavan in 1944
- Widowed mother, Garda and priest
- Letterfrack at 11
- (1960) Blamed for the theft of 5 hens, 2 years imprisonment
- (1962) schizophrenia, not a threat
- (1962) St Davnet's, Monaghan
- (1983) Letter from doctor
- (2010) Died in the hospital



# Doctrinal Legal Method

- emphasising coherence and unity.
- looking for a 'system' of general, logically consistent principles.
- the validity of the argument depends purely on logical form
- 'internal point of view'
- In doing this ,one implicitly takes seriously the *institutions* and concepts through which law expresses its structural coherence.
- one generally accepts the rationality of the subject area, its location within an institutional context, its internal epistemology, its hierarchical and coordinated features, its encompassing and authoritative embrace, and its pragmatic utility. This acceptance helps to validate its claims to truth.



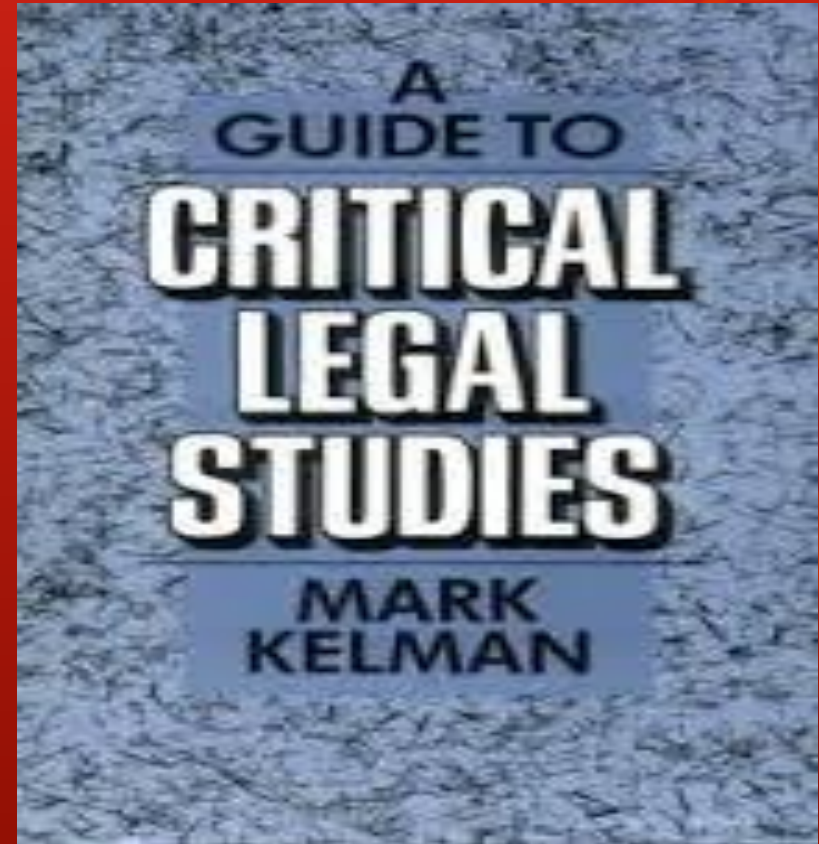
# Jurisprudential - conventional

- Hart
- Primary rules
- Secondary rules; rule of recognition, rule of change,
- Fuller and procedural morality: morality of duty: complies with the 8 ways to make law



# Critical Legal Method

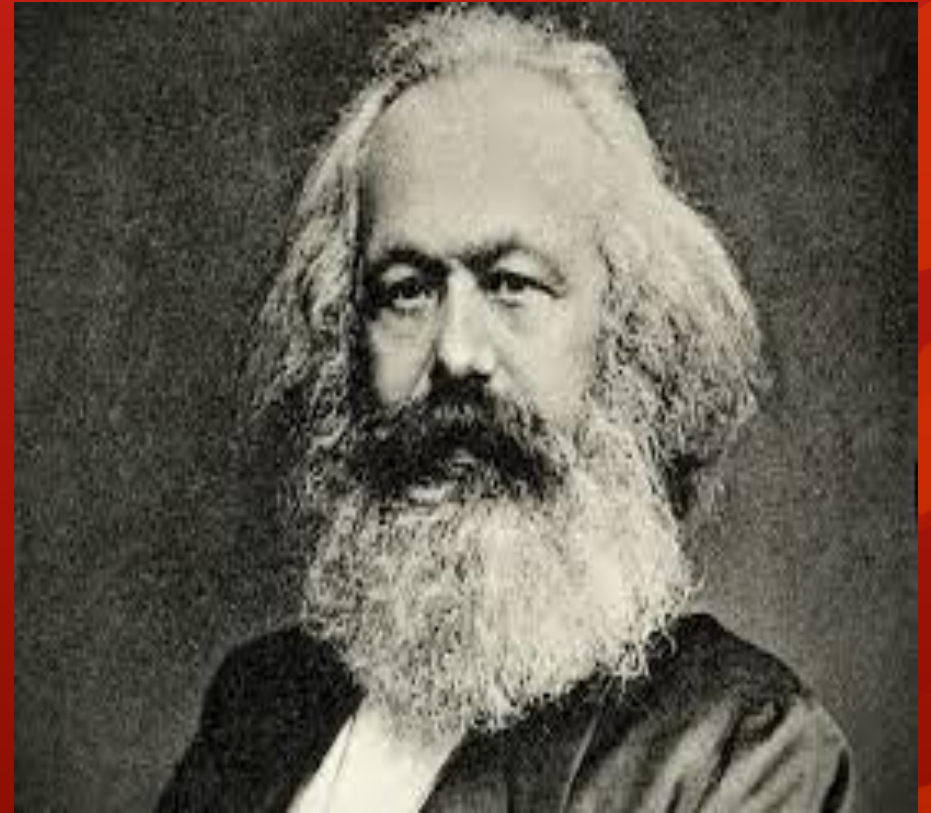
- Rules not the heavily operative factor
- Rules are unstable
- Purported coherence serves as mystification
- Non-legal factors at play
- It often serves the interests of the wealthy and powerful
- literature, psychoanalysis, aesthetics, feminism, gender, sexuality, post-colonialism, race, ethics, politics, history, sociology, and philosophy





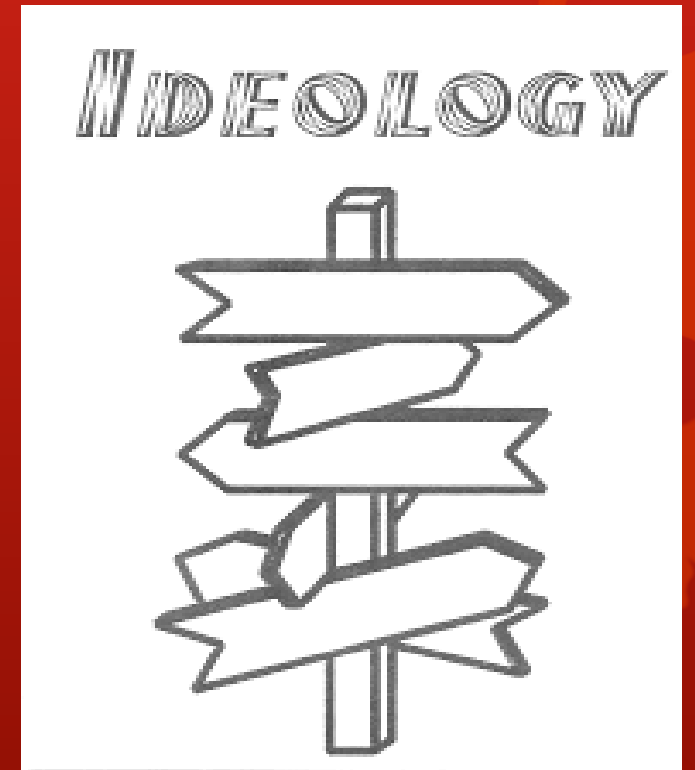
# Hierarchies of power and the status quo

- *"The ideas of the ruling classes are in every epoch the ruling ideas"*
- Often sold as if it is value free
- *'It is not the consciousness of men that determines their existence, but their social existence that determines their consciousness'*
- So – look for unconscious ideological biases that hide behind discourse, which makes it easier for the more powerful in society to pursue their interests. Expose the weaknesses in routine justifications of power (such as equality, rationality, freedom of choice).



# Ideology

- “Many social institutions play a part in ensuring the construction of beliefs and values which are in accordance with the dominant ideology. The education of children in schools is permeated by bourgeois values. Thus history is taught so that modern liberal democracies are the acme of the evolution of human societies. Similarly churches teach deference to authority and property ownership. The mass media either provide escape from the real circumstances of life by emphasizing sport and scandal, or provide information which systematically ignores the class structure and the presence of exploitation...Because the legal system is encountered frequently in daily life, its systematic articulation and dissemination of dominant ideology are some of the chief mechanisms for the establishment of ideological hegemony. Modern criminal codes, for instance, express theories of responsibility for actions which are individualistic and rest upon a belief in the presence of free choice whenever a deviant act is committed.” (Collins, *Marxism and Law*)



Law Follows – it does not lead.

- “The jurist imagines he is operating with a priori propositions, whereas they are really only economic reflections.” (Karl Marx)





# Is this even true of Rights?

- *'The "Enlightenment", which discovered the liberties, also invented the disciplines'*
- *(dark side – the democratization of sovereign power)*



# Critical Legal Studies: unstable babble

- Social Conditioning
- Amoral automata
- Law is based on language

*Much of the trashing work in CLS is designed to counter beliefs (which appear quite clearly in daily life) that the world is running smoothly: for example, that we have intellectually stable practices of blaming wrongdoers, or carefully on adherence to rule-like legality to govern social interaction. The impetus for collective transformation is in part the perception that the world is excessively imperfect.*

Mark Kelman



Rights wall us off from each other, limiting what can be achieved.

- Legal rights act as a medium for the ideology of **possessive individualism** and induce a false sense of justice about the economic and social ordering of the system.
- Rights facilitate **the prevailing hegemonic culture** because you think they safeguard you.
- They sketch **pictures of a society of genuinely free and independent equals**

○ ***"Exactly what people do not need is their rights. What they need are the actual forms of social life that have to be created through the building of movements that can overcome illusions about the nature of what is political."*** Peter Gabel

# Feminisms

- *Male dominance is perhaps the most pervasive and tenacious system of power in history...Its point of view is the standard...its particularity the meaning of universality. Its force is exercised as consent, its authority as participation, its supremacy as the paradigm of order, its control as the definition of legitimacy. **Patricia MacKinnon, Feminism, Marxism, Method and the State: toward feminist jurisprudence***

- 1956 stats – who were locked up
- **Formal**
- Prison 372
- Reformatory Schools 172
- Borstal 29
- **Informal**
- Industrial Schools 4,925
- Unmarried mother 1,915
- Psychiatric hospital 29,000

# Law and Communication

- questions the Kantian notion of the autonomous individual. The law often treats individual petitioners as having full agency vis-à-vis their opponents. They are able to make decisions based on reason that is detached from political, social, or economic constraints.
- Individuals are tied to their communities, socio-economic class, gender, race, and other conditions of life such that they cease to be autonomous actors in the Kantian mode. Rather, their circumstances determine and therefore limit the choices presented to them.





# Foundationalism more generally

- *'The subject is not something given; it is added and invented and projected beyond what there is' (Nietzsche)*
- *'God is dead'*
- *'What do we mean by saying that existence precedes essence? We mean that man first of all exists, encounters himself, surges up in the world – and defines himself afterwards. If man as the existentialist see him as not definable, it is because to begin with he is nothing...Thus there is no human nature, because there is no God to have a conception of it. Man simply is. ...Man is nothing else but that which he makes of himself'. (Sartre)*
- There is no Archimedean point of reference
- Existential Despair



# Conclusion

- Hermeneutics of suspicion
- Do not be afraid of this world – the language etc. It is meant to be used, in real ways. You cannot possibly read it all...or understand it all!
- But be careful:
- - do not use it to scare others off! Use it in good faith to provide insight.
- Or to be dramatic! 'having a Foucault moment' – the permanent existential angst.

Thank you